VJH

265 NLRB No. 140

D--9575
Kokomo, IN

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL UNION NO. 379,
INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND
ORNAMENTAL IRONWORKERS,
AFL--CIO

and

Case 25--CD--216

OWREN KIRKLIN & SONS, INC.

and

WABASH VALLEY DISTRICT COUNCIL
OF CARPENTERS, UNITED
BROTHERHOOD OF CARPENTERS &
JOINERS OF AMERICA, AFL--CIO

DECISION AND ORDER

Upon a charge filed on October 2, 1981, by Owren Kirklin & Sons, Inc. (the Employer), and duly served on Local Union No. 379, International Association of Bridge, Structural and Ornamental Ironworkers, AFL--CIO (Respondent), the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 25, issued a complaint and notice of hearing on June 4, 1982, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(b)(4)(D) and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge

and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that Respondent violated the Act by failing and refusing to comply with the terms of the Board's Determination of Dispute in a 10(k) proceeding.[1] In its answer dated June 14, 1982, Respondent admits in part, and denies in part, the allegations in the complaint.

On June 21, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment submitting that Respondent in its answer admits all of the factual allegations of the complaint but denies the conclusion regarding its unlawful conduct; and that by letter dated May 26, 1982, Respondent advised the Regional Office that it will not refrain from conduct in violation of Section 8(b)(4)(D) of the Act. Subsequently, on June 25, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On July 9, 1982, Respondent filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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[1] Local Union No. 379, International Association of Bridge, Structural and Ornamental Ironworkers, AFL--CIO (Owren Kirklin & Sons, Inc.), 261 NLRB No. 105 (1982).

Upon the entire record in this proceeding, including the record in the 10(k) proceeding and the Board's Decision and Determination of Dispute therein, the Board makes the following:

Ruling on the Motion for Summary Judgment

Pursuant to Section 10(k) of the Act, following a charge and an amended charge filed by the Employer alleging that Respondent had violated Section 8(b)(4)(D) of the Act, a hearing was held on November 5, 1981. On May 13, 1982, the Board issued a Decision and Determination of Dispute finding that there was reasonable cause to believe that Section 8(b)(4)(D) of the Act had been violated by Respondent and that there was no agreed-upon method for the voluntary settlement of the dispute to which all parties were bound. Concluding therefore that it was not precluded from making a determination of the merits of the dispute within the meaning of Sections 8(b)(4)(D) and 10(k) of the Act, the Board decided that the employees of the Employer who are represented by Wabash Valley District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL--CIO (the Carpenters) were entitled to the work in dispute rather than employees represented by Respondent.

In its answer to the complaint, Respondent admits that, by letter dated May 26, 1982, it informed the Acting Regional Director for Region 25 that it would not comply with the Board's Decision and Determination of Dispute issued on May 13, 1982, and contends that the Decision and Determination of Dispute was erroneously decided and further denies that it has engaged in conduct violative of Section 8(b)(4)(D) of the Act.

The issues raised by Respondent have been litigated previously and there is no issue which is properly litigable in this proceeding.[2] As all material allegations are admitted by Respondent's answer to the complaint,[3] or have been decided previously by the Board,[4] there are no matters requiring a hearing. Accordingly, the General Counsel's Motion for Summary Judgment is granted.

Findings of Fact

I. The Business of the Employer

The Employer is now, and has been at all times material herein, an Indiana corporation with its principal offices located in Muncie, Indiana, where it is engaged in the construction of commercial and industrial facilities as well as in the setting, moving, and aligning of equipment in industrial plants. During the 12-month period ending December 31, 1981, which period is

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[2] See Bricklayers, Stone Masons, Marble Masons, Tile Setters and Terrazzo Workers Local Union No. 1 of Tennessee, et al. (Shelby Marble & Tile Co.), 195 NLRB 123 (1972); Local 40, International Brotherhood of Electrical Workers, AFL--CIO (F & B/Ceco of California, Inc., et al.), 205 NLRB 730 (1973).

[3] In its answer, Respondent also denies that Russ Tharrington was a steward on the job being done by the Employer. Respondent admits, however, that Tharrington was an agent of Respondent. We find that Respondent's denial raises no material issue warranting a hearing.

[4] In the 10(k) proceeding, it was uncontested that Respondent threatened to picket the Employer with the object of forcing the Employer to assign the disputed work to employees represented by Respondent. In addition, Respondent admits in its answer to the complaint that an object of its acts and conduct is to force or require the Employer to assign the work in dispute to employees represented by Respondent. Accordingly, and in view of Respondent's admission in its answer that it has refused to comply with the Board's Decision and Determination of Dispute, we find that Respondent's conduct was for an object proscribed by Sec. 8(b)(4)(D) of the Act.

representative of its operation during all times material herein, the Employer, in the course and conduct of its business operations, purchased goods from suppliers located outside the State of Indiana in excess of $50,000. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organizations Involved

Local Union No. 379, International Association of Bridge, Structural and Ornamental Ironworkers, AFL--CIO, and Wabash Valley District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL--CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. Background and Facts of the Dispute

The Employer contracted with the Cabot Corporation to erect two pre-engineered metal buildings which were to be attached to a preexisting building at the Cabot facility in Kokomo, Indiana. The Employer has erected many pre-engineered metal buildings in the State of Indiana but has never erected one within Respondent's jurisdiction. With the exception of part of one building which was constructed by employees represented by a different local of Respondent, the Employer has erected pre-engineered metal buildings only with employees represented by other Carpenters locals. Pursuant to a general collective-bargaining agreement as well as a specialty agreement which specifically mandates that pre-engineered metal buildings be

erected by employees represented by the Carpenters, the Employer assigned the work of erecting the buildings at the Cabot jobsite to employees represented by the Carpenters. Respondent claimed this work and threatened to picket the jobsite if the Employer did not assign the work to employees it represented. The assignment of the disputed work to employees represented by the Carpenters was still in effect at the time of the hearing in the 10(k) proceeding.

B. The Determination of Dispute

On May 13, 1982, the Board issued its Decision and Determination of Dispute assigning the work of erecting pre-engineered metal buildings at the Cabot Corporation jobsite at Kokomo, Indiana, to employees employed by the Employer who are represented by the Carpenters. The Board also found that Respondent was not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the Employer to assign the disputed work to employees represented by Respondent.

C. Respondent's Refusal To Comply

By letter dated May 26, 1982, Respondent's attorney wrote the Acting Regional Director for Region 25, stating:

> On our client's behalf we are hereby notifying you that they will not refrain from forcing or requiring Owren Kirklin & Sons, Inc. to assign the work in dispute to employees represented by the Ironworkers, for the reason that the 10(k) determination by the National Labor Relations Board was in error because it was arbitrary and the Board failed to perform its statutory duty.

On the basis of the foregoing, and the entire record in this proceeding, we find, as described above, that Respondent's conduct in seeking to force or require the assignment of the work

in dispute to employees represented by it, rather than to employees represented by the Carpenters, and Respondent's refusal to comply with the Board's Decision and Determination of Dispute violated Section 8(b)(4)(D) of the Act.[5]

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(D) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

The Board, upon the basis of the foregoing facts and entire record, makes the following:

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[5] Local 40, International Brotherhood of Electrical Workers, AFL--CIO (F & B/Ceco of California, Inc.), supra; District 12, United Mine Workers of America, and Local 2117, United Mine Workers of America (Codell Construction Company, Incorporated), 238 NLRB 1691 (1978).

Conclusions of Law

1. Local Union No. 379, International Association of Bridge, Structural and Ornamental Ironworkers, AFL--CIO, and Wabash Valley District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL--CIO, are labor organizations within the meaning of Section 2(5) of the Act.

2. Owren Kirklin & Sons, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By refusing to comply with the Board's Decision and Determination of Dispute and by attempting to force or require Owren Kirklin & Sons, Inc., to assign the work of erecting pre-engineered metal buildings at the Cabot Corporation jobsite at Kokomo, Indiana, to employees represented by Local Union No. 379, International Association of Bridge, Structural and Ornamental Workers, AFL--CIO, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(D) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local Union No. 379, International Association of Bridge, Structural and Ornamental Workers, AFL--CIO, Lafayette, Indiana, its officers, agents, and representatives, shall:

1. Cease and desist from refusing to comply with the Board's Decision and Determination of Dispute or otherwise threatening, coercing, and restraining Owren Kirklin & Sons, Inc., or any other person engaged in commerce or in any industry affecting commerce, where an object thereof is to force or require Owren Kirklin & Sons, Inc., to assign the work of erecting pre-engineered metal buildings at the Cabot Corporation jobsite at Kokomo, Indiana, to employees represented by Respondent, rather than to employees represented by Wabash Valley District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL--CIO.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its business office and meeting halls copies of the attached notice marked ''Appendix.''[6] Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(b) Furnish the Regional Director for Region 25 signed copies of such notices for posting by Owren Kirklin & Sons, Inc., if willing, in places where notices to employees are customarily posted.

(c) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. December 15, 1982

John R. Van de Water, Chairman

Howard Jenkins, Jr., Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to comply with the Board's Decision and Determination of Dispute or otherwise threaten, coerce, or restrain Owren Kirklin & Sons, Inc., or any other person engaged in commerce or in any industry affecting commerce, where an object thereof is to force or require Owren Kirklin & Sons, Inc., to assign the work of erecting pre-engineered metal buildings at the Cabot Corporation jobsite at Kokomo, Inidiana, to employees represented by us, rather than to employees represented by Wabash Valley District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL--CIO.

LOCAL UNION NO. 379, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL--CIO

(Labor Organization)

Dated ---------- By ----------

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 238, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, Telephone 317--269--7413.